



DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

[Docket No. Fiscal-2021-0007]

RIN 1530-AA21

Debt Collection Authorities under the Debt Collection Improvement Act of 1996

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Department of the Treasury (“Treasury”), Bureau of the Fiscal Service (“Fiscal Service”), regarding the Treasury Offset Program (“TOP”) and the Cross-Servicing program. The primary reason for amending the regulation is to inform the public about how Fiscal Service will use Social Security numbers in mailings, as required by the Social Security Number Fraud Prevention Act of 2017, which requires Fiscal Service to have final regulations in place by September 15, 2022.

DATES: This rule is effective [INSERT DATE THAT IS 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Tawanna Edmonds, Director, Receivables Management & Debt Services Division, Debt Management Services, Bureau of the Fiscal Service at (202) 874-6810.

SUPPLEMENTARY INFORMATION:

I. Background

Legal Authorities. The Debt Collection Improvement Act of 1996 (“DCIA”), Public Law 104-134, 110 Stat. 1321-358 et seq. (April 26, 1996), authorized Federal agencies to refer Federal nontax debt to Treasury for collection services, among other things. *See* 31 U.S.C. 3711(g). The DCIA authorized Federal disbursing officials to withhold eligible Federal nontax payments to pay the payee’s delinquent nontax debt owed to the United States. *See* 31 U.S.C. 3716(c). The DCIA also provided that Federal nontax payments may be offset to collect delinquent debt owed to States, including past-due support, and that payments made by States may be offset to collect delinquent nontax debt owed to the United States. *See* 31 U.S.C. 3716(h). Further, Federal tax refund payments may be offset to collect nontax debt owed to the United States and debt owed to States, including past-due support. *See* 26 U.S.C. 6402, 31 U.S.C. 3720A, and 42 U.S.C. 664.

Cross-Servicing program. Fiscal Service administers the Cross-Servicing program, through which it provides delinquent nontax debt collection services to Federal agencies under 31 U.S.C. 3711(g).

Centralized Receivables Service. Fiscal Service administers the Centralized Receivables Service, or CRS, through which it provides invoicing and early delinquent debt collection services to Federal agencies under 31 U.S.C. 3711(g).

Treasury Offset Program. Fiscal Service administers a centralized offset program, known as the Treasury Offset Program, or TOP, through which it offsets payments to collect debts.

Revision of Regulations. Fiscal Service promulgated 31 CFR 285.12 to implement 31 U.S.C. 3711(g). Among other things, the regulation codified at 31 CFR 285.12 describes the procedures and criteria for transferring delinquent debt to Treasury. It also explains the statutory exceptions to this requirement

and the standards under which the Secretary of the Treasury (“Secretary”) will determine whether to grant exemptions to this requirement.

Fiscal Service promulgated 31 CFR part 285, subpart A to implement the centralized offset of payments through TOP, pursuant to the Debt Collection Improvement Act of 1996.

On March 2, 2022, Fiscal Service published a Notice of Proposed Rulemaking (“NPRM”) at 87 FR 11660 to revise the regulations codified at 31 CFR part 285, subpart A, and 31 CFR 285.12 (the “existing regulations”). The primary reason for revising these regulations is to inform the public about how Fiscal Service will use Social Security numbers in mailings, as required by the Social Security Number Fraud Prevention Act of 2017, which requires Fiscal Service to have final regulations in place by September 15, 2022. The revisions also add definitions for previously undefined terms and reword certain provisions for clarity, consistent with the requirements of the Plain Writing Act of 2010 and Executive Order 12866 (Sept. 1993). This final rule implements the revisions proposed by the NPRM, without change, except to correct a typographical error by moving “and” from the end of § 285.3(m)(2) to the end of § 285.3(m)(3).

II. Analysis of Comments

Fiscal Service received comments from two non-profit organizations in response to the NPRM.

One comment addressed the definition of “legally enforceable” and suggested that debts should not be referred to Fiscal Service for collection until administrative appeals and other challenges are resolved. As stated in the NPRM, the term “legally enforceable” is used in the existing regulations, and the description of the meaning of that term in the existing regulations is in § 285.12(c)(3). The definition of this term, as proposed by the NPRM, is consistent with the existing meaning. The proposed definition provides agencies with necessary flexibility to determine when it is appropriate to refer debts to Fiscal Service’s Cross-Servicing program. The Cross-Servicing program collects a wide variety of debts (ranging from defaulted loans and benefit overpayments to complex audit

disallowances and enforcement findings), and the appropriate level of review before determining a debt to be “legally enforceable” can differ significantly depending on the type of debt. Each agency is best equipped to determine the appropriate level of review for its debts.

The comment also expressed concern that “in the absence of some independent prohibition, agencies will be required to refer debts to” the Cross-Servicing program. Fiscal Service does not agree that this is a necessary consequence of the statement in the NPRM that a pending appeal does not preclude the agency from referring a debt to the Cross-Servicing program. Some agencies provide debtors with dispute opportunities beyond what is required by Fiscal Service’s rules. Only after the agency provides at least the level of due process required by Fiscal Service’s rules may the agency refer the debt to the Cross-Servicing program. An agency would not be required to refer the debt to the Cross-Servicing program if it had not yet completed its required reviews. Moreover, agencies may suspend debt collection activity (including referring debts to the Cross-Servicing program) if the debtor has requested a waiver or review of the debt. 31 CFR 903.2. As such, Fiscal Service does not believe any change is necessary to the definition of “legally enforceable.”

One comment urged Fiscal Service to preserve and expand all existing provisions that allow for suspension of collection. This comment is outside the scope of this NPRM, as it addresses possible changes to a separate regulation, specifically 31 CFR 903.2. Nevertheless, for clarity, Fiscal Service notes that nothing proposed by the NPRM is intended to narrow the existing provisions that allow for the suspension of collection under 31 U.S.C. 3711(a)(3) and the associated regulations, including 31 CFR 903.2.

One comment asserted that the NPRM does not sufficiently address the current debt collection system’s impact on communities of color and recommended that Fiscal Service suspend the operation of TOP until “critical issues are resolved.” This comment is outside the scope of the targeted changes proposed by the NPRM. Nevertheless, Fiscal Service notes that it is conducting an equity review in a

separate forum. See Treasury's Equity Action Plan: One Year Progress Report (April 2022), available at <https://home.treasury.gov/system/files/136/Treasury-EquityActionPlan-OneYearProgress.pdf>.

One comment recommended that Fiscal Service consider limiting the amounts that can be collected through offset of benefit and tax refund payments. This comment is outside the scope of the targeted changes proposed by the NPRM. This comment also made various recommendations regarding the collection of student loan debts owed to the Department of Education. Fiscal Service does not have regulatory responsibilities over student loan debts and would not be authorized or empowered to implement some of the recommended changes.

One comment stated that Fiscal Service should exempt means-tested tax credits from offset. This comment is outside the scope of the targeted changes proposed by the NPRM. Moreover, Fiscal Service lacks the statutory authority to exempt federal tax payments from offset. The Secretary has limited authority to exempt federal nontax payments from offset under 31 U.S.C. 3716(c)(3)(B), including means-tested payments. The Secretary has no such authority with regard to federal tax payments.

One comment asserted that Fiscal Service should increase the dollar threshold for debts that agencies must refer for collections. This comment is outside the scope of the changes contemplated by the NPRM. Nevertheless, Treasury notes that a change to the regulation to accomplish this change is not required, as the existing regulation set the threshold at more than \$25, "or such other amount as Fiscal Service may determine." 31 CFR 285.5(d)(3)(i)(C), 285.12(c)(4). Fiscal Service can, at any time it deems appropriate, increase this threshold without the need for regulatory action, through its regular guidance for or communications with its creditor agencies. Moreover, under 31 CFR 903.3(a)(3), agencies may terminate collection when the costs of collection are anticipated to exceed the amount recoverable. Termination of collection action would excuse the agencies from the general requirement to refer debts to the Cross-Servicing program or the Treasury Offset Program. Relatedly, 31 CFR 901.10 states that agencies should periodically evaluate the cost-effectiveness of collection techniques

and establish guideline with respect to points at which costs of further collection efforts are likely to exceed recoveries. Collection costs in this regard are likely to be a significant factor for small dollar debts.

One comment urged Fiscal Service to look at all its regulations impacting debt collection to mitigate harm to debtors and to advance racial equity including, for example, its administrative wage garnishment regulation. This comment is out of scope and is not addressed here.

III. Procedural Analyses

This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is hereby certified that the rule will not have a significant economic impact on a substantial number of small entities because this rule only impacts persons who receive payments from Federal agencies or States and who are delinquent on debts owed to Federal agencies or States. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Black lung benefits, Child support, Child welfare, Claims, Credit, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Income taxes, Loan programs, Payments, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income, Taxes, Unemployment compensation, Veteran's benefits, Wages.

For the reasons set forth in this preamble, Fiscal Service amends 31 CFR part 285 as follows:

PART 285 – DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for part 285 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

2. In § 285.1, add paragraph (q) to read as follows:

§ 285.1 Collection of past-due support by administrative offset.

* * * * *

(q) *Social Security numbers.* Fiscal Service will ensure that an individual's Social Security number will not be visible on the outside of any package it sends by mail. In addition, Fiscal Service generally will redact or partially redact Social Security numbers in documents it sends by mail; however, to administer administrative offset, Fiscal Service (and other disbursing officials) may include Social Security numbers in mailed documents, including, for example:

(1) In interoffice and interagency communications;

(2) In notices, including notices to the debtor or payee that an offset has or will occur, when the Social Security number is (or is embedded in) a creditor agency's account number, debt identification number, or debtor identification number;

(3) In response to a request of a debtor or a debtor's representative for records of Fiscal Service's offset activities; and

(4) When required by law.

3. In § 285.3, add paragraph (m) to read as follows:

§ 285.3 Offset of tax refund payments to collect past-due support.

* * * * *

(m) *Social Security numbers.* Fiscal Service will ensure that an individual's Social Security number will not be visible on the outside of any package it sends by mail. In addition, Fiscal Service generally will redact or partially redact Social Security numbers in documents it sends by mail; however, to administer the tax refund offset program, Fiscal Service (and other disbursing officials) may include Social Security numbers in mailed documents, including, for example:

(1) In interoffice and interagency communications;

(2) In notices, including notices to the debtor or payee that an offset has or will occur, when the Social Security number is (or is embedded in) a creditor agency's account number, debt identification number, or debtor identification number;

(3) In response to a request of a debtor or a debtor's representative for records of Fiscal Service's offset activities; and

(4) When required by law.

4. In § 285.5, add paragraph (l) to read as follows:

§ 285.5 Centralized offset of Federal payments to collect nontax debts owed to the United States.

* * * * *

(l) *Social Security numbers.* Fiscal Service will ensure that an individual's Social Security number will not be visible on the outside of any package it sends by mail. In addition, Fiscal Service generally will redact or partially redact Social Security numbers in documents it sends by mail; however, to administer the Treasury Offset Program, Fiscal Service (and other disbursing officials) may include Social Security numbers in mailed documents, including, for example:

(1) In interoffice and interagency communications;

(2) In notices, including notices to the debtor or payee that an offset has or will occur, when the Social Security number is (or is embedded in) a creditor agency's account number, debt identification number, or debtor identification number;

(3) In response to a request of a debtor or a debtor's representative for records of Fiscal Service's offset activities; and

(4) When required by law.

5. In § 285.6, add paragraph (n) to read as follows:

§ 285.6 Administrative offset under reciprocal agreements with states.

* * * * *

(n) *Social Security numbers.* Fiscal Service will ensure that an individual's Social Security number will not be visible on the outside of any package it sends by mail. In addition, Fiscal Service generally will redact or partially redact Social Security numbers in documents it sends by mail; however, to administer administrative offset, Fiscal Service (and other disbursing officials) may include Social Security numbers in mailed documents, including, for example:

(1) In interoffice and interagency communications;

(2) In notices, including notices to the debtor or payee that an offset has or will occur, when the Social Security number is (or is embedded in) a creditor agency's account number, debt identification number, or debtor identification number;

(3) In response to a request of a debtor or a debtor's representative for records of Fiscal Service's offset activities; and

(4) When required by law.

6. In § 285.8, add paragraph (k) to read as follows:

§ 285.8 Offset of tax refund payments to collect certain debts owed to States.

* * * * *

(k) *Social Security numbers*. Fiscal Service will ensure that an individual's Social Security number will not be visible on the outside of any package it sends by mail. In addition, Fiscal Service generally will redact or partially redact Social Security numbers in documents it sends by mail; however, to administer the tax refund offset program, Fiscal Service (and other disbursing officials) may include Social Security numbers in mailed documents, including, for example:

(1) In interoffice and interagency communications;

(2) In notices, including notices to the debtor or payee that an offset has or will occur, when the Social Security number is (or is embedded in) a creditor agency's account number, debt identification number, or debtor identification number;

(3) In response to a request of a debtor or a debtor's representative for records of Fiscal Service's offset activities; and

(4) When required by law.

7. Section 285.12(a) is amended by:

a. Removing the words "an agency" and "An agency" wherever they appear and adding in their place the words "a Federal agency" and "A Federal agency", respectively;

b. Removing the words "the agency" and "the agency's" wherever they appear and adding in their place the words "the Federal agency" and "the Federal agency's", respectively;

c. In paragraph (a):

i. Removing the definition for "Agency",

ii. Adding in alphabetical order definitions for "Centralized Receivables Service," "Cross-Servicing program," and "Days delinquent";

- iii. Removing the words “Secretary of the Treasury” and adding in their place the words “Secretary” in the definition for “Debt collection center”;
- iv. Adding in alphabetical order definitions for “Debtor,” “Delinquent or past-due,” “Federal agency,” and “Legally enforceable”; and
- v. Removing the words “a Federal agency” and adding in their place the words “the United States or a Federal agency” in the definition for “Person”;
- d. Revising paragraphs (b), (c), and (d)(1)(iii);
- e. Removing the word “or” at the end of paragraph (d)(1)(v);
- f. Redesignating paragraph (d)(1)(vi) as paragraph (d)(1)(vii);
- g. Adding a new paragraph (d)(1)(vi);
- h. Revising paragraphs (d)(4);
- i. Adding (d)(5) introductory text;
- j. Removing paragraph (d)(6);
- k. Removing and reserving paragraph (e);
- l. In paragraph (i), removing the words “delegatee” and “agency” and adding in their place the words “delegate” and “the debt”, respectively;
- m. Revising paragraph (j); and
- n. Adding paragraph (k).

The revisions and additions read as follows:

§ 285.12 Transfer of debts to Treasury for collection.

(a) * * *

Centralized Receivables Service means the program through which Fiscal Service provides servicing, pursuant to 31 U.S.C. 3711(g), for Federal nontax debt from the point at which a creditor agency establishes a debt until the debt is paid, otherwise resolved, or referred to the Cross-Servicing program for further action.

* * * * *

Cross-Servicing program means the program through which Fiscal Service provides delinquent nontax debt collection services pursuant to 31 U.S.C. 3711(g).

Days delinquent refers to the number of days that a debt has been in a delinquent status. For administrative debts (e.g., debts arising from fines, penalties, and overpayments), the first day of delinquency generally is the date of the creditor agency's initial written demand for payment. For debts that arise from the extension of credit through direct loans, loan guarantees, or insurance, the date of delinquency generally is the due date specified in the applicable agreement or instrument.

* * * * *

Debtor means a person who owes a debt.

Delinquent or past-due refers to the status of a debt and means a debt has not been paid by the date specified in the creditor agency's initial written demand for payment, or other applicable agreement or instrument, unless other payment arrangements satisfactory to the creditor agency have been made.

Federal agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

* * * * *

Legally enforceable refers to a characteristic of a debt and means there has been a final agency determination that the debt, in the amount stated, is due, and there are no legal bars to collection. A debt would not be legally enforceable, for example, if the debt is:

(1) The subject of a pending administrative review required by a statute or regulation that prohibits collection action during the review process; or

(2) Governed by a statute that precludes collection.

(b) *In general.* Fiscal Service and other debt collection centers may take debt collection action on behalf of one or more Federal agencies or a unit or subagency thereof. Fiscal Service provides these services through its Cross-Servicing program and its Centralized Receivables Service.

* * *

(c) *Mandatory transfer of debts to Fiscal Service's Cross-Servicing program.* (1) A debt is considered eligible for transfer to the Cross-Servicing program only if it is past due and is legally enforceable.

(2) Except as set forth in paragraphs (c)(3) and (d) of this section, a creditor agency must transfer any eligible debt that is over \$25 (or such other amount as Fiscal Service may determine) to the Cross-Servicing program by no later than 120 days delinquent if the creditor agency relies on the Cross-Servicing program to submit the transferred debts for centralized offset on the creditor agency's behalf or, otherwise, by no more than 180 days delinquent.

(3) If a final agency determination resulting from an administrative appeal or review process is not made until after the time specified in paragraph (c)(2) of this section, the creditor agency must transfer such debt to the Cross-Servicing program within 30 days after the date of the final decision.

(4) For accounting and reporting purposes, the debt remains on the books and records of the Federal agency, which transferred the debt.

(5) On behalf of the creditor agency, Fiscal Service will take appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon. Appropriate action to collect a debt may include referral to another debt collection center, a private collection contractor, or the Department of Justice for litigation. The creditor agency must advise Fiscal Service,

in writing, of any specific statutory or regulatory requirements pertaining to its debt and will agree, in writing, to a collection strategy, which includes parameters for entering into compromise and repayments agreements with debtors.

* * *

(d) * * *

(1) * * *

(iii) Is at a private collection contractor if the debt has been referred to a private collection contractor for a period of time determined by the Secretary;

* * * * *

(vi) Is being serviced and/or collected in accordance with applicable statutes and/or regulations by third parties, such as private lenders or guaranty agencies; or

* * * * *

(4) A debt is being collected by internal offset if a creditor agency expects the debt to be collected in full within three (3) years from the date of delinquency through the withholding of funds payable to the debtor by the creditor agency, or if the creditor agency has issued notice to the debtor of the creditor agency's intent to offset such funds.

(5) The Secretary may exempt classes of debt from mandatory referral.

* * * * *

(j) *Fees.* Fiscal Service and other debt collection centers may charge Federal agencies fees sufficient to cover the full cost of providing debt collection services authorized by this section. Fiscal Service and other debt collection centers may calculate fees in any manner designed to cover up to the full cost of providing these services, including based on a percentage of collections received on account of a debt while it was being serviced under this section or a flat fee based on actions taken under this section by

Fiscal Service or another debt collection center with regard to a debt or group of debts. Such fees may be determined based on overall program costs and need not be based on costs related to the collection of a specific debt. Fiscal Service and debt collection centers are authorized to retain fees from amounts collected and may deposit and use such fees in accordance with 31 U.S.C. 3711(g). Fees charged by Fiscal Service and other debt collection centers may be added to the debt as an administrative cost if authorized under 31 U.S.C. 3717(e).

(k) *Social Security numbers.* When conducting activities for or related to its Centralized Receivables Service or Cross-Servicing program, Fiscal Service will ensure that an individual's Social Security number will not be visible on the outside of any package it sends by physical mail or in the subject line of an email. In addition, Fiscal Service generally will redact or partially redact Social Security numbers in documents it sends by mail; however, to administer these programs, Fiscal Service may include Social Security numbers in mailed documents, including, for example:

- (1) In interoffice and interagency communications;
- (2) In communications with private collection contractor and agents that assist Fiscal Service in its debt collection activities;
- (3) In notices and letters, including demand letters and notices to employers regarding wage garnishment, when the Social Security number is (or is embedded in) a creditor agency's account number, debt identification number, or debtor identification number;
- (4) In notices to employers regarding wage garnishment;
- (5) In response to a request of a debtor or a debtor's representative for records of Fiscal Service's collection activities; and
- (6) When required by law.

David A. Lebryk,

Fiscal Assistant Secretary.

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